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SUBJ: EXPROPRIATION IN VENEZUELA

REF: (A) STATE 139891; (B) CARACAS

1. RESPONSES TO QUESTIONS IN PARA 2 OF REF A, KEYED TO LETTERED PARAGRAPHS.

A. PAST RECORD OF EXPROPRIATION. AS INDICATED IN OUR INTERIM RESPONSE, REF B, THERE HAVE BEEN NO EXPROPRIATIONS IN VENEZUELA TO BEST OF OUR KNOWLEDG, OTHER THAN IN CASES OF EMINENT DOMAIN. PRESIDENT CALDERA CALLED FOR NATIONALIZATION OF CERTAIN FOREIGN-OWNED ELECTRIC POWER DISTRIBUTING COMPANIES AND MIXED NATIONALIZATION AND VENEZUELANIZATION OF MILK INDUSTRY IN HIS 1974 NEW YEAR'S MESSAGE, AND BILLS WERE INTRODUCED IN CONGRESS TO APPLY EXPROPRIATION LAW. NEGOTIATIONS CONTINUE MEANWHILE, BUT NEW ADMINISTRATION HAS NOT PURSUED THESE MATTERS WITH AS MUCH VIGOR AS COPEI IN LAME-DUCK PERIOD.

B. (1) PERTINENT PROVISIONS OF CONSTITUTION (1961) ARE IN ARTICLE 101, WHICH READS AS FOLLOWS (UNOFFICIAL TRANSLATION IN TELEGRAPHIC STYLE): "ONLY BY REASON OF PUBLIC UTILITY OR SOCIAL
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INTEREST, THROUGH FINAL COURT DECISION AND PAYMENT OF FAIR

INDEMNIZATION, MAY EXPROPRIATION OF ANY CLASS OF PROPERTY BE DECLARED. IN EXPROPRIATION OF REALTY, WITH PURPOSES OF AGRARIAN REFORM OR OF EXPANSION AND IMPROVEMENT OF POPULATIONS (TOWNS), AND IN CASES WHICH FOR GRAVE REASONS OF NATIONAL INTERESTS LAW MAY DETERMINE, MAY DEFERMENT OF PAYMENT FOR GIVEN TIME BE ESTABLISHED, OR PARTIAL SETTLEMENT THEREOF THROUGH ISSUANCE OF BONDS OF OBLIGATORY ACCEPTANCE, WITH SUFFICIENT GUARANTEE."

(2) EXPROPRIATION LAW DATES FROM NOVEMBER 4, 1960. EXPROPRIATION MAY BE UNDERTAKEN ONLY ON BASIS OF CONGRESSIONAL ACTION FINDING THAT PROPERTY IN QUESTION IS MATTER OF "PUBLIC UTILITY" EXCEPT IN LENGTHY LIST OF SECTORS, MOST OF WHICH ARE WIDELY REGARDED IN OTHER COUNTRIES AS FALLING WITHIN PUBLIC SECTOR. GOVERNMENT IS THEN TO APPRAISE VALUE OF PROPERTY, PRESENTING ITS APPRAISAL TO OWNER, AND ENDEAVORING TO NEGOTIATE AGREEMENT. IF AGREEMENT CANNOT BE REACHED ON VALUE OF PROPERTY, APPRAISEMENT COMMITTEE OF TWO JUDGES FROM DIFFERENT COURTS WHO SELECT THIRD MEMBER, PLUS IN ADDITION IN FEDERAL DISTRICT CASES A REPRESENTATIVE OF COLLEGE OF ENGINEERS, MAKE FINAL APPRAISAL. ACTUAL EXPROPRIATION WOULD TAKE FORM OF SUIT BY GOVERNMENT UNIT INVOLVED. IN EMBASSY OPINION, LAW WOULD LEND ITSELF TO PROTRACTED NEGOTIATING PROCESS, WITH GOVERNMENT FIRST USING THREAT OF APPLYING EXPROPRIATION LAW TO PRESS FIRM TO SELL OUT, THEN IF NECESSARY OBTAINING RULING BY CONGRESS TO APPLY EXPROPRIATION LAW AND PROCEEDING WITH PROTRACTED PROCESS OF APPRAISAL, FURTHER NEGOTIATION, AND IF NECESSARY SUIT FOR ACTUAL EXPROPRIATION. UNLESS SUIT IS BROUGHT IN SUPREME COURT BY NATIONAL GOVERNMENT, DECISIONS MAY BE APPEALED FROM LOWER COURTS TO SUPREME COURT. ALL THIS IS SPECULATIVE HOWEVER, BECAUSE PROCEDURE HAS THUS FAR NEVER BEEN FOLLOWED THROUGH OTHER THAN IN CASES OF EMINENT DOMAIN.

C. LAW RESPECTING CALCULATION AND MEANS OF PAYMENT OF COMPENSATION. (WE HAVE NO PRACTICE IN COMPENSATION UNDER EXPROPRIATIONS TO REPORT ON, AS REQUESTED IN REF A.) AS INDICATED ABOVE UNDER PARA 2B, APPRAISAL IS A KEY ELEMENT OF EXPROPRIATION PROCESS, ONCE CONGRESS HAS DETERMINED PROPERTY TO BE MATTER OF "PUBLIC UTILITY" AND IS CARRIED OUT BY GOVERNMENT AND APPEALABLE TO APPRAISEMENT COMMITTEE. UNDER EXPROPRIATION LAW, ORIGINAL VALUE OF REAL ESTATE IS CONSIDERED AND THEN ADDED VALUE. EXPROPRIATING LIMITED OFFICIAL USE

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AGENCY OF GOVERNMENT IS REQUIRED TO DEPOSIT PAYMENT TO APPRAISED VALUE OF PROPERTY WITH AUTHORITY RULING ON DETERMINATION.

D. PROSPECTS FOR PROMPT, ADEQUATE, AND EFFECTIVE COMPENSATION. WE BELIEVE THAT EXPROPRIATIONS OR OTHER NATIONALIZATIONS HAVE GOOD PROSPECTS FOR PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION. EXPROPRIATION PROCEDURE SET FORTH IN LAW WOULD LEND ITSELF TO NEGOTIATED AGREEMENT. OVER MANY YEARS GOVERNMENT HAS BOUGHT

OUT MANY VENEZUELAN AND SOME FOREIGN PRIVATE ELECTRIC POWER DISTRIBUTION COMPANIES, WITH RELATIVELY LITTLE COMPLAINT ABOUT COMPENSATION GIVEN. LITTLE OBJECTIVITY OR INDEPENDENCE CAN BE EXPECTED OF VENEZUELAN ON CASES INVOLVING MAJOR NATIONAL ISSUES, AS EVIDENCED BY ITS INACTION ON QUESTION OF CONSTITUTIONALITY OF REVERSION LAW (PETROLEUM), BUT PRESENT VENEZUELAN ADMINISTRATION PROBABLY WILL TRY TO BE EQUITABLE IN ANY EXPROPRIATION COMPENSATIONS. IT HAS SHOWN INTEREST IN CONTINUING FOREIGN INVESTMENT IN MANY SECTORS AS A MEANS OF TRANSFER OF TECHNOLOGY. WITH ITS OIL REVENUES, IT HAS MEANS TO PROVIDE ADEQUATE COMPENSATION. THERE IS NO PROBLEM ABOUT EXCHANGE CONTROLS. ONLY COMPENSATION ISSUE LIKELY TO ARISE IS PAYMENT IN FORM OF BONDS.

2. OUR STUDY OF THE CONSTITUTION AND EXPROPRIATION LAW IN PREPARING THIS REPORT HAS BROUGHT HOME TO US MORE STRONGLY THAN BEFORE FACT THAT VENEZUELA'S NEW EMPHASIS ON ECONOMIC NATIONALISM IS NOT ALL THAT NEW. THIS NEW NATIONALISM IS APPARENT TO LARGE EXTENT IN CONTRAST TO INERTIA OF COPEI ADMINISTRATION. PRESENT ACCION DEMOCRATICA ADMINISTRATION IS RETURNING BASICALLY TO CONCEPTS OF 1961 CONSTITUTION, CHAPTER V OF WHICH SET FORTH VIGOROUS REFORM IDEOLOGIES AND STRONG STATE ROLE IN ECONOMICSECTOR, WHILE SHOWING RESPECT FOR PRIVATE ENTERPRISE ROLE.

4. FOREGOING REPORT WAS PREPARED BY FOREIGN SERVICE LAYMEN AND NOT BY LAWYERS. WE BELIEVE U.S. GOVERNMENT MAY HAVE PREPARED RECENT LEGAL ANALYSES OF VENEZUELAN LAWS CONCERNING EXPROPRIATION. IN ANY EVENT, OPIC MUST HAVE PREPARED STUDIES ON ENVIRONMENT FOR INVESTMENT IN VENEZUELA WHICH WOULD HAVE BEARING ON THIS QUESTION. THESE WOULD STILL BE APPLICABLE, IN OUR OPINION, BECAUSE NO NEW LAWS OR PRECEDENTS HAVE DEVELOPED RECENTLY.

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